

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

<b>NIKOLAI FRANZ GREGOR SCHWABE, et al. )</b>	
<b>APPLN NO.: 10/769,831 )</b>	<b>GROUP ART UNIT: 1644</b>
<b>FILED: FEB. 2, 2004 )</b>	<b>EXAMINER:</b>
<b>CHIMERIC MHC PROTEIN AND )</b>	<b>OUSPENSKI, ILIA I.</b>
<b>OLIGOMER THEREOF )</b>	

Customer No.: 2071  
Confirmation No.: 2164

Commissioner for Patents  
PO Box 1450  
Alexandria, VA 22313-1450

Sir:

**RESPONSE TO RESTRICTION/ELECTION REQUIREMENT**

This is in response to the Office Action of September 29, 2006, wherein the claims were subjected to a restriction/election requirement.

Claims 1-23 are in the case and have been made subject to a restriction requirement and an election of species requirement. Restriction has been required to one of the inventions identified as to subject matter, class and subclass on pages 2-3 of the Office Action. Election of species has been required with respect to one of the species identified on page 4 of the Office Action.

The Action states that the inventions are independent or distinct for reasons given in the Action and have acquired a separate status in the art in view of their separate classification. The Action further states that the species are distinct and would require different searches in the literature. The Requirement for Restriction and Election of Species are hereby respectfully traversed.

First of all, we note that some of the groups identified in the Office Action share the same, or overlapping class and subclassification. Thus, it is submitted that combining such groups for search purposes would not impose an undue burden.

Secondly, the fee for the claims over 20 has been paid to the Office, and thus the Office has been reimbursed for whatever extra time it might take to examine all of the claims on the merits. In this connection, it is respectfully submitted that the Requirement for Restriction if maintained would contravene the legislation enabling the PTO to charge additional fees for such things as total claims over 20. In particular, Historical and

Revision Notes for the 1980 amendment to 35 U.S.C. §41(a) to (g), in discussing Public Law 96-517, reads in part as follows:

1980 - Pub. L. 96-517 in revising fee provisions by substituting subsecs. (a) to (g) for prior subsecs. (a) to (c) required the Commissioner to establish fees based on recovery of estimated average cost of processing applications . . .

Such fees have been paid. Yet if this requirement for restriction is maintained, the Office would be recovering fees that are not based on recovery of estimated average cost of processing the applications, contrary to the expressed intention of the enabling legislation itself.

Nevertheless, to be fully responsive to the restriction requirement, Applicant provisionally elects, with traverse, the invention of Group 1, Claims 1-12 and 20, as drawn to an oligomeric MHC complex comprising first and second chimeric proteins, wherein the chimeric proteins comprise portions derived from the extracellular part of an MHC class I chain, the pentamerization domain of COMP, a first linker and a tagging domain, or a pharmaceutical or diagnostic composition comprising said complex.

Additionally, Applicant provisionally elects, with traverse, the species A, light detectable label. All of Claims 1-12 and 20 are believed to read upon this species and be generic to it.

Respectfully submitted,

/R. Andrew Patty II/

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#### CERTIFICATE OF SUBMISSION

I hereby certify that this document and any other document referenced herein as accompanying this document, is being filed with the U.S. Patent and Trademark Office via EFS-web on the date indicated below.

Date: 30 October 2006

/R. Andrew Patty II/